

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CERTIFIED AS A TRUE COPY ON

THIS DATE DEC 14 2012

UNITED STATES OF AMERICA

SEALED

INDICTMENT BY

-v.-

12 Cr. ( )

( ) Clerk

( ) Deputy

KEN GILES, and

HONG CHE,

a/k/a "Julie Chen,"

Defendants.

12 CRIM 935

COUNT ONE

The Grand Jury charges:

BACKGROUND ON THE ASYLUM PROCESS

1. Pursuant to federal immigration law, to obtain asylum in the United States, an alien is required to show that he or she has suffered persecution in his or her country of origin on account of race, religion, nationality, political opinion, or membership in a particular social group, or has a well founded fear of persecution if he or she were to return to such country.

2. Alien applicants seeking asylum are required to complete a form called a Form I-589 to the United States Citizenship and Immigration Services ("USCIS"). The Form I-589 requires a detailed and specific account of the basis of the claim to asylum. If the Form I-589 is prepared by someone other than the applicant or a relative of the applicant, such as an attorney, the preparer is required to set forth his or her name and address on the form. The alien applicant and preparer are required to sign the petition under penalty of perjury. The alien applicant must typically apply for asylum within one year of their arrival in the United States.

3. After the Form I-589 is submitted, the alien applicant is interviewed by a USCIS officer (the "Asylum Officer") to determine whether the applicant qualifies for asylum. At the interview, the applicant can present witnesses or documentation in support of his or her asylum claim. After the interview, the Asylum Officer determines whether the alien applicant qualifies for asylum, and that determination is then reviewed by a supervisory officer within USCIS.

4. If an alien applicant is granted asylum, he or she receives a completed Form I-94 that reflects that the USCIS has granted him or her asylum status. The grant of asylum typically applies to the applicant's spouse and children as well. An alien who has a Form I-94 can apply for, among other things, lawful permanent resident status. A grant of asylum status does not expire, although USCIS can terminate asylum status if, among other things, it is later discovered that the applicant obtained asylum through fraud or no longer has a well founded fear of persecution in his or her home country.

5. If the Asylum Officer determines that the applicant is ineligible for asylum status, and if the applicant is in the United States illegally, the matter is referred to an Immigration Judge at the Executive Office for Immigration Review. The Immigration Judge holds a hearing during which the alien applicant, and commonly an immigration lawyer, appear before the Immigration Judge and present evidence in support of the asylum application. In New York City, all immigration hearings take place in New York, New York. After the hearing, the Immigration

Judge renders a decision on the alien's asylum application. If the Immigration Judge denies the asylum application the applicant may appeal that decision to the Board of Immigration Appeals ("BIA"). If the applicant loses his or her appeal before the BIA the applicant may appeal to a federal court.

#### THE SCHEME TO DEFRAUD

6. This scheme involved the submission of fraudulent asylum applications on behalf of Chinese aliens by a law firm in the Chinatown area of New York City. Through the methods described herein, the defendants, a lawyer and employee at a law firm in the Chinatown area of New York City, and their co-conspirators, profited by creating and submitting asylum applications containing false stories of persecution purportedly suffered by alien applicants.

7. KEN GILES and HONG CHE, a/k/a "Julie Chen," the defendants, worked together at the Law Office of KEN GILES (the "Law Firm") located at 299 Broadway, New York, New York. GILES was a lawyer and CHE served as a paralegal and office manager. The Law Firm specialized in immigration work and in particular asylum applications. Since 2007, the Law Firm has submitted at least 54 asylum applications on behalf of their clients.

8. Typically, before the Law Firm agreed to represent a client, HONG CHE, a/k/a "Julie Chen," the defendant, conducted a screening interview of the potential client. One of the purposes of that interview was for CHE to determine whether there was any information about the client -- that could be discovered by the USCIS -- that would bar the client from receiving asylum.

For example, if the client had a passport that showed the client had been in the United States for more than one year the case would likely be rejected by the USCIS. On the other hand, if the client had been in the United States for more than one year but there was no proof of the client's date of entry into the United States the Law Firm considered taking the case.

9. HONG CHE, a/k/a "Julie Chen," the defendant, sometimes with the assistance of KEN GILES, the defendant, drafted the asylum applications, including the fabricated stories of persecution, on behalf of their clients.

10. KEN GILES and HONG CHE, a/k/a "Julie Chen," the defendants, fabricated stories of persecution that usually followed one of three fact patterns: (a) forced abortions performed against woman clients pursuant to China's family planning policy; (b) persecution based on the client's belief in Christianity; or (c) political or ideological persecution, typically for membership in China's Democratic Party or followers of Falun Gong.

11. After the Form I-589 asylum application was submitted, HONG CHE, a/k/a "Julie Chen," the defendant, would often prepare the client for his or her interview with the Asylum Officer. In instances where the client was not actually a Christian but was claiming persecution based on his or her Christianity, HONG CHE, a/k/a "Julie Chen," sometimes referred the client to a church where he or she could receive training in the basic tenets of Christianity and obtain certificates proving that he or she belonged to a church in New York where he or she

worshiped. This training improved the client's chances of convincing the Asylum Officer that he or she was in fact Christian and was persecuted for those beliefs in China.

12. On the day of the interview, the Law Firm sometimes arranged for a translator to accompany the client to the interview. The translator was paid to provide two basic services. One, was to provide additional coaching and training to the client in advance of the interview (sometimes the translators were paid to train the clients days in advance of their interviews). The translators, who often had seen hundreds of asylum interviews, advised the clients of questions he or she were likely to be asked and how to answer them.

13. The translators were also paid to translate during the interviews. However, the translators were frequently paid not merely to translate the client's answers from Chinese to English but to do so in a way that was favorable to the client. For example, if the client answered a question in a way that was inconsistent with the fabricated story of persecution the translator was expected to falsely translate the answer so that it conformed to the story.

14. If the Asylum Officer did not grant the client asylum, KEN GILES, the defendant, would often argue the case before an Immigration Judge. In advance of the hearing, KEN GILES often met with the client (typically with the aid of an interpreter) to prepare him or her for the hearing. At these preparation sessions, GILES often coached the client on what to say and tried to ensure that the client would not say anything

that contradicted the story that the Law Firm had made up. At the hearing, the client testified, and GILES questioned him or her, about the fictitious story of persecution.

#### STATUTORY ALLEGATIONS

15. From in or about 2007 through in or about December 2012, in the Southern District of New York and elsewhere, KEN GILES and HONG CHE, a/k/a "Julie Chen," the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, immigration fraud in violation of Title 18, United States Code, Section 1546(a).

16. It was a part and object of the conspiracy that KEN GILES and HONG CHE, a/k/a "Julie Chen," the defendants, and others known and unknown, would and did knowingly and willfully forge, counterfeit, alter, and falsely make an immigrant and nonimmigrant visa, permit, border crossing card, alien registration receipt card, and other document prescribed by statute and regulation for entry into and as evidence of authorized stay and employment in the United States, and would and did utter, use, attempt to use, possess, obtain, accept, and receive any such visa, permit, border crossing card, alien registration receipt card, and other document prescribed by statute and regulation for entry into and as evidence of authorized stay and employment in the United States, knowing it to be forged, counterfeited, altered, and falsely made, and to have been procured by means of a false claim and statement, and

to have been otherwise procured by fraud and unlawfully obtained to wit, KEN GILES and HONG CHE, a/k/a "Julie Chen," the defendants, prepared and submitted asylum applications containing material misstatements to United States Citizenship and Immigration Services which resulted in the clients receiving I-94 cards, in violation of Title 18, United States Code, Section 1546(a).

#### Overt Acts

17. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about March 2011, HONG CHE, a/k/a "Julie Chen," the defendant, fabricated a story of persecution purportedly suffered in China by a client of the Law Firm.

b. In or about March 2011, KEN GILES, the defendant, signed an asylum application containing material misstatements.

(Title 18, United States Code, Section 371)

#### COUNT TWO

The Grand Jury further charges:

18. In or about March 2011, in the Southern District of New York and elsewhere, KEN GILES, the defendant, knowingly and willfully made under oath, and as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribed as true, a false statement with respect to a material fact in an application, affidavit, and other document

required by the immigration laws and regulations prescribed thereunder, and knowingly presented such an application, affidavit, and other document which contained such a false statement and which failed to contain any reasonable basis in law and fact, to wit, KEN GILES, the defendant, submitted an asylum application on behalf of a client that contained material misstatements to the United States Citizenship and Immigration Services in an effort to obtain a Form I-94 for his client.

(Title 18, United States Code, Sections 1546(a) & 2.)

COUNT THREE

The Grand Jury further charges:

19. In or about March 2011, in the Southern District of New York and elsewhere, HONG CHE, a/k/a "Julie Chen," the defendant, knowingly and willfully made under oath, and as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribed as true, a false statement with respect to a material fact in an application, affidavit, and other document required by the immigration laws and regulations prescribed thereunder, and knowingly presented such an application, affidavit, and other document which contained such a false statement and which failed to contain any reasonable basis in law and fact, to wit, HONG CHE, a/k/a "Julie Chen," the defendant, drafted an asylum application on behalf of a client that contained material misstatements and was later submitted to the United States Citizenship and Immigration Services in an effort to obtain a Form I-94 for her client.

(Title 18, United States Code, Sections 1546(a) & 2.)



### FORFEITURE ALLEGATIONS

20. As a result of committing the offenses alleged in Counts One and Two of this Indictment, KEN GILES, the defendant, and as a result of committing the offenses alleged in Counts One and Three of this Indictment, HONG CHE, a/k/a "Julie Chen," the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, including but not limited to a sum in United States currency representing the amount of proceeds obtained as a result of the offenses.

### Substitute Assets Provision

21. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value;  
or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C.

§ 853(p), to seek forfeiture of any other property of said  
defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981 and  
Title 28, United States Code, Section 2461)



FOREPERSON

Preet Bharara  
PREET BHARARA  
United States Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

KEN GILES and HONG CHE, a/k/a "Julie  
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INDICTMENT

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(18 U.S.C. §§ 1546(a), 371 & 2.)

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PREET BHARARA  
United States Attorney.

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